



WEB COPY

WP No. 2979 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-03-2025

CORAM

THE HONOURABLE MRS JUSTICE N. MALA

**WP No. 2979 of 2021
and WMP.Nos.3343 and 3345 of 2021**

1. D.Kannagi

W/o. E.Viswanathan, No. 5/135, White
Field Road, Kumaran Nagar,
Mannivakkam Extn, Chennai 600 048

Petitioner(s)

Vs

1. The Additional Chief Secretary to
Government,
Home (Pol.2) Department, Secretariat,
Fort St. George, Chennai.

2.The Superintendent of Police,
Kancheepuram District, Kancheepuram.

Respondent(s)

PRAYER

Writ Petition is filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Certiorarified Mandamus, to call for the



records in G.O.(2D) No. 277 dated 05.11.2020 passed by the first respondent

herein and quash the same, consequentially directing the first respondent to

reinstate the petitioner with all benefits of salary and continuity in service and

thus render justice.

For Petitioner(s): R.Ganesh Kumar

For Respondent(s): Mr.L.S.M.Hasan Fazil,
Additional Government Pleader

ORDER

This Writ Petition is filed challenging the order of the 1st respondent dated 05.11.2020, imposing the punishment of compulsory retirement and to quash the same, and consequently directing the first respondent to reinstate the petitioner with all benefits of salary and continuity in service and thus render justice.

2.The petitioner was recruited directly as Sub-Inspector of Police in the year 2004. While she was working as Sub-Inspector of Police, on 12.02.2008, one Mr.Nagalingam was apprehended with 105 litres of illicit distilled arrack



and a case in crime No.79 of 2008 was registered by Mr.Ramasubramaniam,

Inspector of Police. The remand prisoner died while in police custody and so on

28.01.2011, Departmental proceedings were initiated against the petitioner.

Meanwhile, on the basis of the recommendations and Government Order, in the

year 2015, the Executive Magistrate filed a complaint before the learned

Judicial Magistrate, Maduranthakam for the offences under Sections, 147, 449,

342, 302 and 149 IPC in PRC No.23 of 2015 against the petitioner. On the

basis of the report of Executive Magistrate, PR No.73/2016, was opened against

the petitioner and a charge memo was issued to the petitioner as well as the

other police personnel. The petitioner filed a Criminal Original Petition in

CrI.O.P.No.14507 of 2016, before this Court for quashing the criminal case and

this Court vide order dated 11.04.2018, quashed the criminal case against the

petitioner. Meanwhile, the first respondent based on the enquiry report

submitted by the second respondent issued show cause notice to the petitioner

on 24.10.2018, calling for explanation from the petitioner. The petitioner

submitted her explanation on 10.12.2018, but without considering the

petitioner's explanation, the first respondent passed the impugned order dated

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05.11.2020, imposing a punishment of compulsory retirement. Challenging

which the above writ petition is filed for the aforesaid relief.

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3.The respondents filed detailed counter stating interalia, that government vide G.O.(Ms).No.113, Public (L & O-E) Department, dated 28.01.2011, recommended initiation of criminal prosecution as well as disciplinary proceedings against the delinquent officers. Departmental action was initiated against the petitioner in PR.No.73/16 and a charge memo was issued to the petitioner. The second respondent was appointed as the Enquiry Officer. The Enquiry Officer submitted his report on 27.03.2018, absolving the delinquent officer of the charges on his finding that the charges were not proved. The 1st respondent issued a notice dated 24.10.2018, to the petitioner, calling for her explanation as the Government decided to deviate from the enquiry Officer's report on the basis of the Executive Magistrate/Revenue Divisional Officer's report. The petitioner submitted her explanation on 10.12.2018. After detailed examination of the charge, defence statement of the delinquent officer, findings of the enquiry officer and further explanation of the petitioner, the Government



decided to hold the charge against the petitioner as proved and imposed the punishment of Compulsory Retirement on the petitioner. According to the respondents there was no error in the impugned order and therefore under the facts and circumstances of the case the impugned order was justified and the same did not call for any interference by this Court.

4.I have heard both the learned counsels and I have perused the materials placed on record.

5.From the record, it is seen that the Enquiry Officer in his detailed report clearly stated that the charges against the petitioner were not proved. Therefore, when the 1st respondent deviated from the Enquiry Officer's findings, he ought to have given cogent and justifiable reasons for deviating from the enquiry officer's report. As rightly contended by the learned counsel for the petitioner, even at the stage of issuing the show cause notice, calling for explanation on the Enquiry Officer's report, the first respondent pre-determined the issue by holding that the charges were proved and therefore the show cause notice was



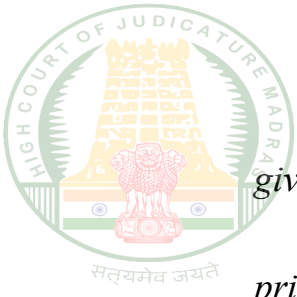
only an empty formality. In the show cause notice dated 24.10.2018 it was

stated as follows:

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4.The Government after careful examination have decided to deviate from the findings of the inquiry officer on the following points and held the charge against you as 'proved':-

“The RDO/PAG to Collector, Chennai District in his report has stated that, the deceased viz., Thiru.Nagalingam got fell down while brushing is not acceptable since due to the torture/attack inflicted on him by the police personnel he had fell down. Further, medical examination to the deceased was not done prior to lodging him in madhuranthakam Sub Jail and if it had been done his external wounds would come into light but the police personnel had prevented it. The postmortem report reveals that the ribs of the deceased got swollen which in turn affected the lungs due to the violent hit over the chest made by the police personnel. Finally he has concluded that the reason for the death of Thiru.Nagalingam is due to the extreme torture



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given by the police personnel, before handing over him to the prison personnel (Exp.25). Further, the wife, father and brother of the deceased concerned and panchayat people had stated that the said Thiru.Nagalingam was in well and good wealth condition before getting arrested by the police personnel and hence the death of Thiru.Nagalingam had occurred due to the violent attack by the police personnel and they were confirmed by Ex.Ps., 10, 11, 12, 13, 17 and 25”.

5.I am therefore, to request you to submit your further representation on the above said deviated views of the Government on the findings of the inquiry officer.

6.I am also to inform that if you fail to submit your representation within 15 days from the date of receipt of this letter, it will be construed that you have no representation to offer and further action will be taken on merits of the case.

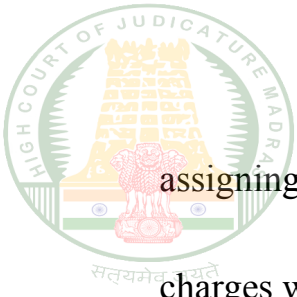
6.From a reading of the show cause notice referred to above it is clear that



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the 1st respondent even without assigning any tentative reasons for deviating from the Enquiry Officer's report concluded that the charges were proved. By pre-determining the issue the very purpose of issuing the show cause notice was defeated. The Hon'ble Supreme Court, in Punjab National Bank and Others Vs. Sh.Kunj Behari Misra reported in 1998 (7) SCC 84 and Yoginath D.Bagde Vs. State of Maharashtra and Another reported in 1997 (7) SCC 739 emphasised the necessity of giving tentative reasons for deviating from the Enquiry Officer's findings. This requirement is particularly significant when the findings are in favour of the delinquent officer. However, in the impugned order, no reasons have been provided by the Disciplinary Authority for deviation. Hence in my view there is a procedural lapse in the enquiry proceeding and hence the impugned order cannot be sustained.

7.Further, it is seen from the impugned order that the first respondent has not applied his mind to the facts and circumstances of the case and the explanation submitted by the petitioner. The first respondent has merely recorded the submission of the petitioner and even without discussing or



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assigning any reasons for rejecting the petitioner's submissions held that the charges were proved and imposed the punishment of compulsory retirement. As rightly contended by the learned counsel for the petitioner the impugned order reflects total non-application of mind by the 1st respondent. It is trite in law that the reasons are blood line of decisions. Reasons reflect the mind of the authority in the decision making process. In the absence of reasons it is to be inferred that the authority did not apply his mind to the materials placed before him. On this ground also, I find that the impugned order cannot be sustained.

8. In view of the above discussions, I am of the view that the impugned order deserves to be set aside and hence it is set aside. The respondents are directed to reinstate the petitioner with all benefits of salary, continuity of service and other attendant benefits, within a period of 12 weeks from the date of receipt of a copy of this order.

9. Accordingly, this Writ Petition is allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are



WP No. 2979 of 2021



WEB COPY

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. The Additional Chief Secretary to
Government,
Home (Pol.2) Department, Secretariat,
Fort St. George, Chennai.

2. The Superintendent of Police,
Kancheepuram District, Kancheepuram.



WEB COPY

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N.MALA J.
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